(2000) 08 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2211 of 1999

Ramesh Kumar and another		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: Aug. 17, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 226

Citation: (2000) 08 P&H CK 0034

Hon'ble Judges: R.C. Kathuria, J; N.K. Sodhi, J

Bench: Division Bench

Advocate: Mr. R.L. Gupta, for the Appellant; Mr. Gurminder Singh, DAG, for the Respondent

Judgement

N.K. Sodhi, J.

This order will dispose of 4 Civil Writ Petitions No. 1602, 2041, 2211 and 2606 of 1999 in which common questions of law and fact arise. Since arguments were addressed only in CWP 2211 of 1999, the facts are being taken from this case.

2. Petitioners joined in December, 1986 the Revenue Department in the State of Punjab as Patwaris. They were posted in District Bathinda. Further promotion from the post of Patwari is to that of Kanungo and a Patwari becomes eligible for promotion only after he has qualified the departmental examination prescribed in Appendix "C" to the Punjab Kanungo Service (State Service Class-III) Rules, 1976. This departmental examination consists of 4 papers including a paper in Urdu language. On December 20, 1982 the State Government issued instructions dispensing with the examination and the Director, Land Records was required to devise a suitable course of proper duration to judge and test the proficiency and suitability of the Patwaris for promotion to the post of Kanungo. These instructions were challenged in this Court in a large number of writ petition including Civil Writ Petition No. 6849 of 1994 filed by Navinder Singh and others. These

writ petitions were allowed by this Court on March 29, 1995 and it was held as under:

"(i) The instructions issued by the Government vide lelter dated December 20. 1982 are not in conformity with the Rules. These, are consequently, auashed. The promotions which have been made during the pendency of these petitions without holdings test, are illegal. These will now be made on the result of a test to be held in accordance with the provisions of the 1976 Rules. All the vacancies which may have occurred during the pendency of these petitions upto November 8, 1994, shall be filled up on the basis of this test.

(ii) The respondents are directed to hold a test in respect of these vacancies and promotions made during the pendency of these petitions made during the pendency of these petitions, are set aside."

3. In pursuance to the aforesaid directions issued by this Court, the respondents held a departmental test from 25.3.1996 to 27.3.1996 and the examination in Urdu paper was held on 26.3.1996. The result of the test for the entire State (district-wise) was declared on 28.2.1997 and the petitioners were declared successful. They were then promoted to the post of Kanungo in July, 1997. They claim that they have also cleared the Urdu paper of the departmental test held for further promotion from the post of Kanungo to that of Naib Tehsildar. Anil Kumar and two other Patwaris from Ropar district challenged the validity of the examination in the Urdu paper in CWP 2966 of 1998. It was alleged that large scale irregularities-had been committed during the course of that examination and that some of the candidates had been declared successful even though they could not read or write Urdu. When that writ petition came up for hearing before the Motion Bench on April 3, 1998 the learned Judges directed Shri H.R. Megh, the then Director, Land Records who was present in Court to carry out a probe and find whether any malpractice took place during the course of the exam inat ion or thereafter. He was also required to find out whether the answer-sheets were in the handwriting of the private respondents therein and if not, at what stage were the answer-sheets tampered with. Shri Megh held an inquiry and submitted his detailed report running into 70 typed pages. He found that the examination in the Urdu was not fair and the evaluation of the answer-sheets was questionable. He also found that large scale irregularities had been committed during the course of that exam inat ion and he indicted Shri K.C. Anand who was the examiner in the Urdu paper. After going through the report this Court quashed the result of all the candidates who appeared in the Urdu paper in the Revenue District of Ropar and directed the department to examine them once again in that paper. Since the sanctity of the entire examination in the State of Punjab had been questioned, Ihe learned Judges while disposing of the writ petition made the following observations :-

"It may be observed here that in the report, the sanctity of the entire examination in Urdu paper has also been questioned. Since no other person belonging to other revenue districts who might have passed the examination in Urdu is before us, we leave it to the authorities to take any action in accordance with law on the basis of the report. We may

further observe here that since there are adverse observations in the report against Shri K.C. Anand, at present Land Acquisition Collector, Improvement Trust, Jalandhar, who was the Examiner in Urdu paper, the State Government would be at liberty to take any action against him in accordance with law (civil/criminal/departmental) on the basis of the said report. The writ petition stands disposed of accordingly."

The report of Shri Megh was then considered by the Financial Commissioner, Revenue who by her order dated January 12, 1999 ordered as under:

"After careful examination of the said report. Government has come to the conclusion that there has been large scale use of unfair means/tampering of record. Therefore, the entire result of Urdu paper held on 26.3.1996 is hereby quashed."

In view of the orders passed by the State Government and in pursuance to the directions issued by this Court in Anil Kumar''s case (supra), the Director, Land Records, Punjab fixed 4.3.1999 as the date for a fresh examination in the paper of Urdu from 11.00 A.M. to 1.00 P.M. A communication was sent to all the Deputy Commissioners requiring them to inform all the Pat-waris who had appeared in the examination on 26.3.1996 that a fresh examination was being held.

4. Feeling aggrieved by the order of the State Government quashing the result of the Urdu paper held on 26.3.1996 and also by the communication sent by Ihe Director of Land Records giving notice for holding a fresh examination on 4.3.1999, the petitioners who belong to Bathinda district have filed the present petition under Article 226 of the Constitution. In response to the notice of motion the respondents have filed their reply and controverted the averments/allegations made in the writ petition.

5. Shri Ram Lal Gupia, learned counsel for the petitioners strenuously urged that since his clients have cleared the Urdu paper for further promotion to the post of Naib Tehsildar, their result in the Urdu paper held on 26.3.1996 for promotion to the post of Kanungo should not be quashed. We are not at all impressed with this argument. It is true that for promotion from the post of Kanungo to that of Naib Tehsildar a departmental test is prescribed which includes a paper in Urdu language. May be, the petitioners have cleared that paper but as per the averments made in the written statement filed by the respondents the petitioners have not cleared the departmental examination in toto. Be that as it may, merely because the petitioners have cleared the Urdu paper for further promotion to the post of Naib Tehsildar is by itself no ground to allow their result in the Urdu paper held on 26,3.1996 to stand. As already observed, Shri Megh the then Director of Land Records has in his report found that large scale irregularities were committed in the conduct of the examination of the Urdu paper which was held on 26.3.1996. Relying on that report, this Court had quashed the result of the candidates in the Ropar district and left it to the State Government to take a decision in regard to the other districts. That report camp up for consideration before the Financial Commissioner and the State Government accepting the same quashed the entire result of the Urdu paper in the State.

In view of the large scale malpractices pointed out by Shri Megh in his report, the Government was justified in cancelling the entire result in the State and in the very nature of things, it could not be quashed partly. We, therefore, reject this contention of Shri Gupta.

6. It was then contended that the Financial Commissioner while passing the impugned order on January 12, 1999 did not apply her mind and that the order is liable to be quashed on this ground alone. This argument, too, cannot be accepted. A detailed inquiry into the conduct of the Urdu examination held on 26.3.1996 was ordered by this Court when the same was challenged in Anil Kumar''s case (CWP 2966 of 1998). The State Government accepted the inquiry report and even this Court had accepted the same and ordered the cancellation of the result of the candidates in the Ropar district. Moreover, the Financial Commissioner observed in her order that the result was being quashed alter a careful examination of the report. In this view of the matter, we cannot hold that the order suffers from the vice of jack of application of mind and rather it was a fair and just order.

7. Petitioners then contended through their counsel that they should have been afforded with an opportunity of hearing before their result in the Urdu paper was quashed. This argument need not detain us for long because the learned Judges of the Apex Court in The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others, have held that where the authorities are satisfied that unfair means were adopted on a large scale in an examination then before cancelling the examination as a whole it is not necessary to give an opportunity 10 all the candidates to represent their cases. The Court observed as under :

"It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

8. Shri Gupta then argued that the respondents had not given sufficient time to the petitioners to prepare for the examination and. therefore, their action in holding a fresh examination stood vitiated. Here again, we are unable to agree with him. The Director, Land Records had sent a communication to the Deputy Commissioner, Bathinda on 27.1.1999 for holding a fresh examination on 4.3.1999. The candidates were given more than a month to prepare for the examination and it does not lie in their mouth to advance such a plea when they claim to have passed even the higher examination in Urdu paper for promotion to the post of Naib Tensildar. It may be mentioned that when the writ petition came up for hearing before the Motion Bench on 17.2.1999 a prayer for staying the holding of the fresh examination was made. The Bench did not grant lhat prayer and observed that it would be open to the petitioners to take the examination to be held on

4.3.1999. They chose not to sit in the examination.

9. Shri Gupta then argued that in pursuance to the impugned action of the respondents, the petitioners are likely to be reverted from the post of Kanungo. That may be so because that would be the consequence of the order quashing the result of the Urdu paper held on 26.3.1996. Petitioners have not yet been reverted and their reversion is not the subject of challenge in this writ petition.

10. Lastly, it was contended that the service Rules governing the promotion from the post of Patwari to Kanungo have been repealed in the year 1994 and the departmental examination has been done away with and, therefore, the petitioners should not be required to appear in this test as directed by respondent No. 2. It is true that the Rules have been repealed but the vacancies against which the petitioners have been promoted had been caused much prior to the amendment of the Rules and, therefore, those vacancies had to be filled up in accordance with the Rules as they then stood. Moreover, this prayer of the petitioners cannot be granted as that would be contrary to the directions isbsued by this Court in Navinder Singh"s case (supra). We, therefore, reject this contention as well.

In the result, there is no merit in the writ petitions and the same stand dismissed leaving the parties to bear their own costs.

11. Petition dismissed.